

1992

State of Utah v. Todd Allen Parker : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

920732
STATE OF UTAH, :
Plaintiff-Appellee, : Case No. 920732-CA
v. :
TODD ALLEN PARKER, : Priority No. 15
Defendant-Appellant. :

BRIEF OF APPELLEE
- - - - -

DEFENDANT'S APPEAL FROM ORDER DENYING HIS
MOTION FOR RETURN OF FEES, ENTERED BY THE THIRD
DISTRICT COURT, IN AND FOR SALT LAKE COUNTY,
UTAH, THE HONORABLE HOMER F. WILKINSON,
PRESIDING.

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U. S. Court of Appeals

SEP 3 1992

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IN THE UTAH COURT OF APPEALS

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BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

Todd Allen Parker ("Parker") appeals a trial court order that denied his motion for return of money he paid for rehabilitative treatment. The treatment was ordered pursuant to Parker's burglary convictions, which were then reversed upon his original appeal, State v. Parker, 834 P.2d 592 (Utah App. 1992). The presently challenged order was entered by the Third District Court, in and for Salt Lake County, Utah, the Honorable Homer F. Wilkinson, presiding.

Parker asserts this Court's jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1993) (appeals in criminal cases). However, as set forth in Point One of this brief, there is no subject matter properly before this Court, upon which it may exercise jurisdiction.

ISSUES PRESENTED ON APPEAL
AND
STANDARDS OF APPELLATE REVIEW

This appeal is more complex than it seems at first glance. A threshold issue, not previously identified by the

parties, yet potentially dispositive, must be resolved before the issue framed by Parker may be addressed:

1. Upon Appellate Remand for a New Trial, and Subsequent Dismissal of the Criminal Prosecution, Did the Trial Court Lose Jurisdiction Over the Question of Whether Any Money Spent by Parker Pursuant to his Original Conviction and Sentence Should be Returned to Him, Given that He Failed to Present that Question within Ten Days after the Order of Dismissal? This is a question of subject matter jurisdiction; on the pertinent uncontested facts, it is a question of law. Subject matter jurisdiction may be challenged on appeal, even if not challenged in the trial court. Thompson v. Jackson, 743 P.2d 1230, 1232 (Utah App. 1987) (per curiam) (subject matter jurisdiction is the "fundamental and initial inquiry" of any court).

2. When a Convicted Criminal Defendant Pays for Psychosocial Treatment, Pursuant to a Criminal Sentence, and the Underlying Conviction is then Reversed on Appeal for Fourth Amendment Error Unrelated to the Defendant's Factual Guilt, Is the Defendant then, if Not Re-Prosecuted, Entitled to Return of the Money He Paid for the Treatment? The State agrees that this issue, thus framed, is one of law or, more precisely, judicial policy, inasmuch as it obliges this Court to address the scope of the judicially-created exclusionary rule. Cf. State v. Vigil, 815 P.2d 1296, 1299-1300 (Utah App. 1991) (addressing appellate court's role in guiding trial courts).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The threshold jurisdictional issue raised by the State is controlled by Rule 59(e), Utah Rules of Civil Procedure, applicable to criminal matters pursuant to Utah R. Civ. P. 81(e). Rule 59(e) provides: "A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment."

The issue presented by Parker is governed by Rule 28(a), Utah Rules of Criminal Procedure. Rule 28(a) (fully copied in Addendum A to Br. of Appellant) provides that when a criminal conviction is reversed on appeal, and no new trial is held, "a defendant in custody shall be discharged, and a defendant restricted by bail or otherwise shall be released from restriction and bail exonerated and any deposit of funds or property refunded to the proper person." See also Utah R. Crim. P. 25(d) (subject to exceptions not applicable to this case, when criminal charges are dismissed, "the defendant shall be discharged and bail exonerated"); Utah Code Ann. § 77-1-7 (Supp. 1993) (codifying Utah R. Crim. P. 25(d)).

STATEMENT OF THE CASE

Parker's statement of the case accurately recounts that this Court reversed his burglary convictions, holding that evidence supporting the convictions had been obtained as the result of an unconstitutional arrest. See State v. Parker, 834 P.2d 592 (Utah App. 1992) (Addendum B to Br. of Appellant). Upon remand, faced with suppression of its key evidence, the State

decided to not reprosecute Parker. Therefore, the criminal case was dismissed (R. 52, copied in Appendix I of this brief).

Parker subsequently moved for a refund of the fines he had paid pursuant to the convictions, along with fees that he had paid to the Fremont Community Correctional Center ("Fremont Center" or "Fremont"), a State-run, residential psychosocial treatment program. Parker was enrolled at Fremont while his original appeal was pending, pursuant to probation that was ordered upon the burglary convictions. At the State's stipulation, the trial court ordered the fines refunded to Parker, but denied his request for refund of the Fremont treatment fees (R. 59, copied in Addendum D of Br. of Appellant; R. 56, copied in Appendix II of this brief).¹ Parker appeals the latter part of the order.

STATEMENT OF FACTS

Parker's factual guilt of the September 1990 burglaries appears beyond dispute. As recounted in this Court's opinion in his original appeal, Parker confessed to the burglaries, and was positively identified by one of the burglary victims. On this powerful evidence, he was convicted at a bench trial. Parker, 834 P.2d at 593. This Court reversed his convictions because the evidence, although compelling, was deemed to have been obtained as the result of an unconstitutional arrest. Id. at 595-96.

¹The court did not address the restitution that was also ordered under the burglary convictions (the judgments, including the fines and restitution orders, copied in Parker's docketing statement to his original appeal, are recopied in Appendix I of this brief). Parker did not seek a refund of any restitution.

With respect to his present effort to recover the treatment fees that he paid to the Fremont Center under the subsequently reversed burglary convictions, Parker has overlooked several pertinent facts. First, while the criminal case against him was dismissed, following the appellate reversal, on July 31, 1992, Parker's motion for refund of the fines and treatment fees was not filed until August 19, 1992 (R. 53, copied in Addendum C to Br. of Appellant). This fact should dispose of this appeal.

Next, preliminary inquiry by the Utah Attorney General's office reveals a dispute about how much Parker actually paid to the Fremont Center. Parker evidently alleges that he paid \$1620.00 to Fremont ("\$180 per month for nine months" (Br. of Appellant at 4, based upon counsel's proffer at R. 73, copied in Appendix II of this brief)), and now desires a "refund" of that amount to him. However, Fremont officials assert that Parker was assessed fees of \$1548.00, and that of this amount, he still owes \$401.71 (July 29, 1993 Affidavits of Vicki Harker and Judy Sahm, and attached exhibits, copied in Appendix III of this brief; originals on file with the Utah Attorney General).²

²The affidavits, not presently part of the record, are proffered to show a factual dispute, not to prove how much Parker actually paid to Fremont. Only if this Court wholly rejects the arguments set forth in this brief will the precise amount in controversy become central to this appeal. In that event, the proffer is made solely to demonstrate that the case should be remanded to the trial court for findings on the amount actually due to Parker. Accordingly, it does not appear necessary, at this point, to supplement the record with the affidavits, under Utah R. App. P. 11. If this Court disagrees, the State hereby moves for such supplementation, for the above-described limited purpose only.

Finally, it appears that Parker advanced no motion for a certificate of probable cause, under Utah Code Ann. § 77-20-10 (1990), pending his original appeal. If granted, such a motion might have enabled Parker to avoid any confinement while awaiting that appeal's outcome. Also, papers filed in this Court show that Parker's briefs in his original appeal were filed with thirty-day extensions requested by his counsel, each alleging that "Mr. Parker is not incarcerated." That allegation now appears questionable, at least with regard to the reply brief extension, apparently requested while Parker was residing at the Fremont Center.³ After this appeal, it may become necessary to determine how much Parker actually paid to Fremont, and of that amount, how much should be attributed to Parker's counsel, rather than solely to the State's decision to enroll Parker at Fremont.

SUMMARY OF ARGUMENT

Upon dismissal of the charges against Parker, and his failure to make any further requests within ten days after the order of dismissal, the trial court lost jurisdiction over the criminal case. The trial court no longer had any criminal subject matter before it, upon which it could enter any order. This problem, overlooked by the parties and the trial court, yet properly raised for the first time on appeal, compels dismissal of this appeal.

³That extension request was filed in this Court on January 3, 1992. Fremont Center officials allege that Parker resided there from November 12, 1991 to July 31, 1992 (Harker Affidavit, Appendix III of this brief).

Such dismissal should be without prejudice to Parker's right to bring a civil action for the Fremont Center fees that he believes should be refunded to him, as a consequence of the post-appeal dismissal of the criminal charges. However, such action seems doomed, because in it, Parker's factual guilt of the dismissed criminal charges will be admissible to show that he, not the State, proximately caused the monetary harm of which he will complain.

Parker's request for a refund of the Fremont fees also raises a policy question regarding the scope of the fourth amendment exclusionary rule. That rule, developed to deter police misconduct, barred Parker's criminal liability for crimes of which he is factually guilty. Pursuant to that bar, and under a reasonable construction of the pertinent criminal procedure rules, the punitive fine paid by Parker, before appellate application of the exclusionary rule, was properly refunded to him. That consequence advanced the police-deterrent purpose of the exclusionary rule.

But a refund of the Fremont fees, accrued before Parker's convictions were reversed, is unsupported by precedent and would not deter police misconduct. Rather, it would deter prosecutorial and judicial leniency, as granted to Parker by the imposition of probation and rehabilitative efforts, rather than penal incarceration, upon his burglary convictions. Such expansion of the exclusionary rule's scope would also effectively reward Parker for his criminal activity, by allowing him to

retain, free of charge, the room, board, and rehabilitative services provided to him by Fremont. Parker ought not be unjustly enriched in such a manner.

ARGUMENT

POINT ONE

THIS APPEAL SHOULD BE DISMISSED, BECAUSE THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION OVER THE DISMISSED CRIMINAL CASE, UNDER WHICH PARKER FILED HIS MOTION FOR THE REFUND OF FINES AND FEES.

A. Termination of Criminal Case on August 10, 1992.

In his present appeal, Parker characterizes the trial court's post-appeal dismissal as a "sentence" that must be "corrected" (Br. of Appellant at 6). This is incorrect. Parker was only "sentenced" once, under his original convictions for the September 1990 burglaries. When this Court reversed those convictions in State v. Parker, 834 P.2d 592 (Utah App. 1992), it also necessarily vacated the attendant sentences.

Parker apparently views the original sentences as "illegal," or void at their inception, within the terms of Utah R. Crim. P. 22(e) (copied in Addendum A to Br. of Appellant). See State v. Montoya, 825 P.2d 676, 679 (Utah App. 1991) (an illegal sentence is void). This, too, is incorrect. The term "illegal sentence," as used in Rule 22(e), applies to situations where the sentence does not conform to the crime of which the defendant has been convicted, or where the sentencing procedure itself was improper. E.g., Montoya (inquiring whether trial

court erred by not ordering a mental examination prior to sentencing).

Parker does not argue that the three suspended, second degree felony sentences imposed upon him were out of conformity with his burglary convictions. See Utah Code Ann. § 76-6-202(2) (1990) (burglary of a dwelling is a second degree felony).⁴ Nor does he argue that the sentencing proceeding that took place upon his original convictions was improper.

Parker's sentences, then, were not "illegal" in any sense until this Court vacated them upon his original appeal. Were this not so, there would be no need to statutorily provide that a convicted defendant may apply for, and be granted, a certificate of probable cause that might allow release pending appeal. See Utah Code Ann. § 77-20-10 (1990). Instead, a criminal conviction would never be final, and no sentence could be imposed upon the defendant, until an appeal is taken and decided. In this case, the trial court would have acted illegally if, upon the guilty verdicts, it had failed to sentence Parker. See Utah R. Crim. P. 22(c) (upon verdict, trial court "shall impose sentence"). Therefore, until his convictions were reversed by this Court, Parker stood legally sentenced.

⁴On his initial appeal, Parker tacitly conceded that the three burglarized garages were "dwellings." But cf. State v. Cox, 826 P.2d 656, 662 (Utah App. 1992) (stating, in dictum, that garages are not "dwellings;" held, a vacation cabin is a "dwelling"). The garages burglarized by Parker were attached to houses, and the State's position at his original trial was that as such, they were a part of "dwellings" (T. 3/7/91 at 12, 39, 52, 123).

Upon that reversal, the sentences were vacated and the case of State v. Parker was remanded to the trial court, 834 P.2d at 596, preserving the State's option to retry Parker. Because this Court's application of the fourth amendment exclusionary rule barred introduction of the evidence that proved Parker's factual guilt, the State did not retry him, and the criminal case was dismissed on July 31, 1992 (R. 52, Appendix I of this brief). That order of dismissal, of course, imposed no sentence whatsoever upon Parker. Instead, that order was, in essence, a final judgment that ended Parker's potential criminal liability for the burglaries.

Attendant to that final judgment, the pertinent criminal procedure rules only required that Parker "be released from restriction and bail exonerated and any deposit of funds or property refunded to the proper person." Utah R. Crim. P. 28(a); accord Utah R. Crim. P. 25(d); Utah Code Ann. § 77-1-7 (Supp. 1993) (codifying Utah R. Crim. P. 25(d)). In fact, it appears that Parker was released from the Fremont Center, where he had been committed pursuant to his original convictions, on July 31, 1992--the day that the judgment of dismissal was signed (R. 52; Harker Affidavit, Appendix III of this brief). Under the above-cited rules, all other ongoing restrictions placed upon Parker by his probation terms also ended on July 31.

Parker then had ten days, under Utah R. Civ. P. 59(e) (applicable to criminal proceedings under Utah R. Civ. P. 81(e)), in which he could move to amend that judgment. In such motion,

Parker could request the refund, if appropriate, of any fines or fees that he had paid before his convictions were reversed, and before the State decided not to retry him. But Parker made no such motion. Therefore, on August 10, 1992, the criminal matter of State v. Parker was fully and irretrievably concluded.

It follows that on August 10, 1992, the trial court lost subject matter jurisdiction over the case. This conclusion logically flows from the law that governs what would have happened if Parker had been successfully reprosecuted following his original appeal. Under such circumstances the trial court, after imposing a new sentence upon Parker, would have again lost subject matter jurisdiction over the case, except to correct any legal error in the new sentence. Montoya, 825 P.2d at 679. Because the dismissal order that was entered imposed no sentence, and because that order stood unchallenged until after the time to amend it had passed, the trial court lost all subject matter jurisdiction over State v. Parker. Put differently, the case simply ceased to exist.

Accordingly, Parker's August 19, 1992 motion for the return of fines and fees, under the heading of State v. Parker, had no legal effect, because it was filed under a nonexistent case. The trial court should have denied or "dismissed" what was, in effect, a free-floating motion. See Thompson v. Jackson, 743 P.2d 1230, 1232 (Utah App. 1987) (per curiam) (subject matter jurisdiction is "[t]he fundamental and initial inquiry" of a court). Nor was the subject matter of State v. Parker

resurrected by the State's in-court response to Parker's motion (R. 73, 76, Appendix II of this brief): "Unlike a court's exercise of jurisdiction over a person or a party, subject matter jurisdiction cannot be created or conferred on the court by consent or waiver." Thompson v. Jackson, 743 P.2d at 1232.

Because the trial court lacked subject matter jurisdiction over Parker's free-floating motion, even its order refunding the fines paid by Parker, pursuant to the reversed convictions, is void. Technically, the State could demand that Parker pay back the fines, which evidently were refunded to him (R. 57, copied in Appendix II of this brief). The State will make no such demand.⁵ Nevertheless, because the trial court lacked subject matter jurisdiction to even consider either the return of the fines or the return of the treatment fees Parker paid to the Fremont Center, this Court's only proper action is to dismiss Parker's present appeal. Montoya, 825 P.2d at 681; Thompson v. Jackson, 743 P.2d at 1232-33.

Such disposition may, at first, seem technical and unfairly arbitrary. Upon careful reflection, it is not. Under statutes of limitation, nearly every manner of civil and criminal wrong becomes legally irremediable if judicial action is not

⁵As set forth under Point Two of this brief, Utah R. Crim. P. 28(a) may be construed to include a fine as a "deposit," returnable to a defendant who is not reprosecuted following a successful appeal. Under such construction and in the interest of fairness, Parker would have legitimately recouped the fine that he paid, had he timely requested it. Accordingly, no good purpose would be served by demanding that Parker now return the fine because of the jurisdictional error through which he recouped it.

instituted in timely fashion. E.g., Utah Code Ann. §§ 78-12-1 through -33.5 (1992 & Supp. 1993) (civil actions); §§ 76-1-302, -303 (Supp. 1993) (most criminal prosecutions). All such limits have an element of arbitrariness, but "when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision . . . must be accepted unless we can say it is very wide of any reasonable mark." Louisville Gas & Elec. Co. v. Coleman, 277 U.S. 32, 41, 48 S. Ct. 423, 426 (1928) (Holmes, J., dissenting) (quoted in State v. Bell, 785 P.2d 390, 401-02 (Utah 1989)).

The ten-day time, fixed by Utah R. Civ. P. 59(e), in which Parker might have sought to amend the order dismissing his criminal charges, to include the return of fines and fees to him, cannot be assailed as "wide of any reasonable mark." Parker will probably argue that his motion to return the fines and fees was reasonably timely, given that he filed it only nineteen days after the criminal charges were dismissed. That argument, applied only to this particular case, seems persuasive enough.

But if Parker prevails under a "reasonableness"-based expansion of subject matter jurisdiction in this case, who can then deny some other former criminal defendant twenty days, thirty days, or several months or years, to advance some similar request? With no clearly fixed limit in which to do so, any number of such former defendants may wish to reopen their cases, to recoup damages they may allege as a consequence of criminal charges that were dismissed long ago.

In the interest of stability, predictability, and finality of dismissed criminal actions, the only proper response is to hold a firm line under the rules as they are written. Accordingly, for lack of subject matter jurisdiction, this appeal must be dismissed.

B. Parker May Seek the Refund Via a Civil Action.

Such dismissal will not, however, automatically bar Parker from attempting to remedy the wrong that he now alleges. The dismissal of this appeal should be without prejudice to Parker's right to file a civil complaint, if he so wishes, seeking recovery of the fees he paid to Fremont. See Utah Const. art. I, § 12 (Utah courts are open for "any civil cause"). The State comments, however, that such action appears likely to fail.

In his prospective civil action, Parker will presumably complain that he was monetarily damaged by his unconstitutional treatment at the hands of the officers who arrested him. See State v. Parker, 834 P.2d 592 (Utah App. 1992). The officers did not directly harm Parker. Rather, the arrest led to Parker's burglary convictions which, under the resulting sentences, caused him to accrue fees at the Fremont Center. Those fees, Parker will allege, represent his damages.

Given these facts, the prospective defendants will argue that Parker himself caused his damages. He was, after all, factually guilty of the September 1990 burglaries, even though, as a result of his original appeal, his prosecution turned out to be legally barred by the fourth amendment exclusionary rule. See

State v. Sery, 758 P.2d 935, 939 (Utah App. 1988) (despite factual guilt, legal error in the seizure of evidence may bar successful criminal prosecution).

Other appellate courts have held that when a former criminal defendant seeks civil damages under such circumstances, evidence that was suppressed in the prior criminal action is admissible for the former prosecuting entity's civil defense. See McDaniel v. City of Seattle, 65 Wash. App. 360, 828 P.2d 81 (1992) (former criminal defendant's civil complaint for police tort; evidence of former defendant's actual criminal conduct admissible), review denied, 120 Wash. 2d 1020, 844 P.2d 1017 (1993); Herndon v. Ithaca, 349 N.Y.S.2d 227, 43 A.D.2d 634 (1973) (same). Thus in his prospective civil action, Parker's factual guilt of burglary will be admissible for the purpose of showing that he, not the State or any other possible defendants, proximately caused the damage of which he will complain.

POINT TWO

THE FOURTH AMENDMENT EXCLUSIONARY RULE DOES NOT RELIEVE PARKER FROM FEES HE ACCRUED FOR REHABILITATIVE SERVICES BEFORE THE DISMISSAL, UPON HIS ORIGINAL APPEAL, OF THE CRIMINAL CHARGES AGAINST HIM.

Although the present appeal must be dismissed, Parker's prospective civil action to recover the treatment fees paid to the Fremont Center will also present a judicial policy issue regarding the scope of the exclusionary rule remedy for police violations of the fourth amendment. In the event this Court might reject the jurisdictional bar explained in Point One of

this brief, that issue becomes central to the present appeal. In either event, it is appropriate to address it now.

On the merits of his claim for the refund of money spent pursuant to his subsequently vacated burglary sentences, Parker has a strong argument for a refund of the fines that he paid. That argument is technically moot, given that the Parker has already recouped the fines, and the State has no intention of demanding that Parker return them. The State observes, however, that Utah R. Crim. P. 28(a) can be reasonably stretched to construe a fine, imposed for purely punitive purposes, as a "deposit," refundable to Parker upon the post-appeal dismissal of the burglary charges. See United States v. Lewis, 478 F.2d 835 (5th Cir. 1973), and State v. Superior Court, 2 Ariz. App. 545, 410 P.2d 502 (1966) (fines, imposed upon criminal convictions, were properly refunded when convictions were subsequently set aside) (cited in Br. of Appellant at 7, 8).

But the fees paid by Parker to the Fremont Center, before his sentences were vacated, are of a wholly different nature. Those fees had no punitive purpose, but were paid for room, board, and psychosocial treatment, with the purpose of rehabilitating Parker. Indeed, through counsel at his original sentencing, Parker acknowledged his need for rehabilitation, challenging only the length of the proposed Fremont Center stay (R. 81-86, copied in Appendix III of this brief).

As Parker properly acknowledges (Br. of Appellant at 5), no precedent squarely holds that rehabilitative service fees

must be refunded when a criminal conviction is reversed on appeal, and court-ordered rehabilitation efforts are thereby terminated. The cases cited by Parker to support such a rule (Br. of Appellant at 6-9) are far off-point. As already noted, Lewis and State v. Superior Court involve the return of fines, not rehabilitation fees. The cases otherwise involve the unconstitutionality or misinterpretation of statutes that defined the charged crimes, e.g., Lewis, Ex parte McCurley, 412 So. 2d 1236 (Ala. 1982), State v. Piekkola, 241 N.W.2d 563 (S.D. 1976), and People v. Meyerowitz, 61 Ill. 2d 200, 335 N.E.2d 1 (1975); error in imposition or amount of fines for particular offenses, e.g., Mossew v. United States, 266 F. 18 (2nd Cir. 1920), State v. Danielson, 809 P.2d 937 (Alaska App. 1991), and State v. Stein, 806 P.2d 346 (Alaska App. 1991); and imposition of a fine beyond the amount jurisdictionally permitted to the sentencing court, People v. Reggel, 28 P. 955 (Utah 1892). Finally, without meaningful analysis, and admitting that he did not brief the issue in the trial court, Parker argues that state constitutional "due process" entitles him to a refund of the fees he paid to the Fremont Center (Br. of Appellant at 9-11).

Absent on-point authority or preserved, meaningful analysis, this Court should not create the unprecedented rule urged by Parker. Such a rule would expand the scope of the exclusionary rule well beyond its primary purpose--the deterrence of police misconduct. See United States v. Janis, 428 U.S. 433, 446, 96 S. Ct. 3021, 3028 (1976) (police deterrence is the "prime

purpose" of the exclusionary rule, "if not the sole one"); McDaniel v. City of Seattle, 65 Wash. App. 360, 828 P.2d 81, 83-85 (1992) (citing Janis and other United States Supreme Court limitations of the exclusionary rule to its police-deterrent purpose), review denied, 120 Wash. 2d 1020, 844 P.2d 1017 (1993). The termination of Parker's criminal liability and the issuance of this Court's published opinion, spelling out the police errors in Parker's September 1990 arrest, have adequately advanced the exclusionary rule's proper purpose.

If it is now held that Parker is entitled to a refund of the Fremont Center fees, this Court would actually punish prosecutorial and judicial conduct that was never subject to police control, and that should be supported, not deterred. At sentencing, Parker sought leniency because of his relatively clean prior criminal history. Through counsel, he expressed a desire undergo rehabilitation that would include gainful employment, counselling, and attainment of a high school equivalency diploma. The prosecutor agreed that this was appropriate (R. 81-86, Appendix III of this brief). The trial court, in its virtually unfettered sentencing discretion, see State v. Rhodes, 818 P.2d 1048, 1049 (Utah App. 1991), therefore ordered rehabilitative probation, rather than imprisonment.

If the rehabilitative fees paid by Parker now must be refunded to him, prosecutors and trial courts in future, similar situations will be encouraged to exercise their discretion

against such leniency and rehabilitative efforts. Rather, they will simply sentence the convicted defendant to prison.

If the defendant then obtains appellate reversal and is not reprosecuted, he or she will be entitled only to release from prison; further relief would be due only upon proof of actual damages. See Miller v. Cox, 443 F.2d 1019, 1021 (4th Cir. 1971) (absent authorizing legislation, prisoner released upon invalidation of sentence is not entitled to compensation for time served);⁶ Logan v. Superintendent, Virginia, 389 F. Supp. 1242, 1243 (E.D. Va. 1975) (no compensation, under 42 U.S.C. § 1983, for time served pursuant to a subsequently voided conviction). Parker's argument for refund of his Fremont Center fees therefore promotes the exercise of sentencing discretion in a way that will harm future, similarly-situated criminal defendants: To avoid extra expense upon successful appeals, such defendants will, upon conviction, simply be sent straightaway to prison, rather than placed upon rehabilitative probation.

Parker's argument can also be perceived as an effort at overreaching. It is difficult to imagine that the \$180.00 per month charged by Fremont to Parker would cover the actual cost of his room and board, much less the cost of the counselling and vocational rehabilitation services provided to him (R. 81-83; see also Harker Affidavit, Appendix III of this brief). Thus

⁶The Miller opinion goes on to observe that any legislative scheme for such compensation would consider "whether the prisoner was in fact guilty" 443 F.2d at 1021. Parker's factual guilt of burglary would therefore most likely preclude any recovery for punishment already endured by him.

pursuant to his original, rehabilitation-oriented sentence, Parker received benefits worth far more than the fees assessed to him. Now Parker demands a further benefit, beyond the heavily-subsidized Fremont Center services: he wants the State, in effect, to actually pay him for receiving those services.

That audacious demand should be rejected. The State has already suffered the consequence that, because of fourth amendment error in his arrest, Parker must elude full liability for the burglaries that he committed. Acquiescence in Parker's demand for refund of the Fremont fees would allow him to profit from the burglaries, albeit in a manner different from what he must have contemplated when he committed them. This would amount to Parker's unjust enrichment--a result not commanded by the exclusionary rule, nor by any constitutional principle.

CONCLUSION

As set forth in Point One of this brief, this appeal should be dismissed, permitting Parker, should he so desire, to seek a civil remedy for the wrong that he now alleges. If the merits of his exclusionary rule-based claim are reached, however, that claim, as set forth in Point Two, should be rejected.

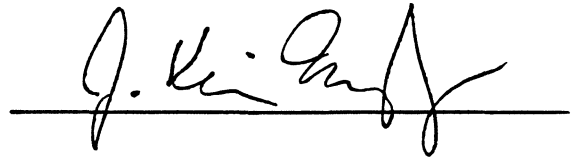
RESPECTFULLY SUBMITTED this 03 day of September, 1993.

JAN GRAHAM
Attorney General


J. KEVIN MURPHY
Assistant Attorney General

CERTIFICATE OF MAILING

I certify that a true and accurate copy of the foregoing brief of appellee was mailed, postage prepaid, to JOAN C. WATT and LISA J. REMAL, Salt Lake Legal Defender Association, attorneys for defendant-appellant, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, this 03 day of September, 1993.

A handwritten signature in cursive script, appearing to read "J. Kim", is written over a horizontal line.

APPENDIX I

Post-Appeal Dismissal Order

Original Sentences

Third Judicial District

JUL 31 1992

LISA J. REMAL
Attorney for Defendant
SALT LAKE LEGAL DEFENDER ASSN.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

SALT LAKE COUNTY

By mt
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	ORDER OF DISMISSAL
Plaintiff,	:	
v.	:	
TODD PARKER,	:	Case No. 901901633FS
Defendant.	:	HONORABLE HOMER F. WILKINSON

IT IS HEREBY ORDERED that the above-entitled matter be dismissed. This dismissal is based on the decision of the Utah Court of Appeals in State v. Parker, 189 Utah Adv. Rep. 3 (Ct. of App., 1992) in which that court reversed this court's denial of the defendant's Motion to Suppress and ordered the state's evidence be suppressed.

DATED this 31 day of July, 1992.

BY THE COURT:

HONORABLE HOMER F. WILKINSON
Third District Court

DELIVERED a copy of the foregoing to the office of the Salt Lake County Attorney, 2001 South State Street, suite S-3700, Salt Lake City, Utah 84190-1200, this 31st day of July, 1992.

SEP 1992

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH



THE STATE OF UTAH,

Plaintiff,

vs.

Todd Allen Parker

Defendant.

JUDGMENT, SENTENCE
(COMMITMENT)

Case No. 901901633
Count No. 1
Honorable Wilkinson
Clerk D. Garner
Reporter S. Wagnier
Bailiff J. Fullmer
Date April 5, 1991

☐ The motion of _____ to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is ☐ granted ☐ denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by ☐ a jury; ☒ the court; ☐ plea of guilty; ☐ plea of no contest; of the offense of Burglary, a felony of the 2 degree, ☐ a class _____ misdemeanor, being now present in court and ready for sentence and represented by T. Beathan and the State being represented by J. Spikes, is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

☐ to a maximum mandatory term of _____ years and which may be for life;

☐ not to exceed five years;

☒ of not less than one year nor more than fifteen years;

☐ of not less than five years and which may be for life;

☐ not to exceed _____ years;

☒ and ordered to pay a fine in the amount of \$10,000.00

☐ and ordered to pay restitution in the amount of \$_____ to _____

☐ such sentence is to run concurrently with _____

☐ such sentence is to run consecutively with _____

☐ upon motion of ☐ State, ☐ Defense, ☐ Court, Count(s) _____ are hereby dismissed.

☐ _____

☒ Defendant is granted a stay of the above (☐ prison) ^{a fine} sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of 18 months pursuant to the attached conditions of probation.

☐ Defendant is remanded into the custody of the Sheriff of Salt Lake County ☐ for delivery to the Utah State Prison, Draper, Utah, or ☐ for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.

☐ Commitment shall issue _____

DATED this 5th day of April, 1991

APPROVED AS TO FORM:

J. T. F. [Signature]
DISTRICT COURT JUDGE

Defense Counsel

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

Todd Allen Parker

Defendant.

JUDGMENT, SENTENCE
(COMMITMENT)

Case No. 901901633
Count No. 2
Honorable Unknown
Clerk D. Carver
Reporter S. Warnick
Bailiff J. Fullmer
Date April 5, 1991

☐ The motion of _____ to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is ☐ granted ☐ denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by ☐ a jury; ☒ the court; ☐ plea of guilty; ☐ plea of no contest; of the offense of Burglary, a felony of the 2 degree, ☐ a class _____ misdemeanor, being now present in court and ready for sentence and represented by J. Bradshaw and the State being represented by J. Spikes, is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

☐ to a maximum mandatory term of _____ years and which may be for life;

☐ not to exceed five years;

☒ of not less than one year nor more than fifteen years;

☐ of not less than five years and which may be for life;

☐ not to exceed _____ years;

☒ and ordered to pay a fine in the amount of \$10,000.00

☐ and ordered to pay restitution in the amount of \$_____ to _____

☐ such sentence is to run concurrently with _____

☐ such sentence is to run consecutively with _____

☐ upon motion of ☐ State, ☐ Defense, ☐ Court, Count(s) 1 are hereby dismissed.

☐ _____

☒ Defendant is granted a stay of the above (☐ prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of 18 months pursuant to the attached conditions of probation.

☐ Defendant is remanded into the custody of the Sheriff of Salt Lake County ☐ for delivery to the Utah State Prison, Draper, Utah, or ☐ for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.

☐ Commitment shall issue _____

DATED this 5th day of April, 19 91

APPROVED AS TO FORM:

DISTRICT COURT JUDGE

Defense Counsel

Page 1 of 2

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

Todd Allen Parker

Defendant.

JUDGMENT, SENTENCE
(COMMITMENT)

Case No. 901901633
Count No. 3
Honorable WILKINSON
Clerk D. GARNER
Reporter S. W. JACOB
Bailliff J. Fullmer
Date April 5, 1991

☐ The motion of _____ to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is ☐ granted ☐ denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by ☐ a jury; ☒ the court; ☐ plea of guilty; ☐ plea of no contest; of the offense of Burglary, a felony of the 2 degree ☐ a class _____ misdemeanor, being now present in court and ready for sentence and represented by J. Broderick and the State being represented by _____, is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

☐ to a maximum mandatory term of _____ years and which may be for life;

☐ not to exceed five years;

☒ of not less than one year nor more than fifteen years;

☐ of not less than five years and which may be for life;

☐ not to exceed _____ years;

☒ and ordered to pay a fine in the amount of \$10,000.00

☐ and ordered to pay restitution in the amount of \$_____ to _____

☐ such sentence is to run concurrently with _____

☐ such sentence is to run consecutively with _____

☐ upon motion of ☐ State, ☐ Defense, ☐ Court, Count(s) _____ are hereby dismissed.

☐ _____

☒ Defendant is granted a stay of the above (☐ prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of 18 months, pursuant to the attached conditions of probation.

☐ Defendant is remanded into the custody of the Sheriff of Salt Lake County ☐ for delivery to the Utah State Prison, Draper, Utah, or ☐ for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.

☐ Commitment shall issue _____

DATED this 5th day of April, 1991

APPROVED AS TO FORM:

[Signature]
DISTRICT COURT JUDGE

Defense Counsel

Deputy County Attorney

Judgment/State v. Todd Allen Parker CR 90901633 /Honorable Wilkinson

CONDITIONS OF PROBATION

- ☒ Usual and ordinary conditions required by the Dept. of Adult Probation & Parole.
- ☐ Serve _____
in the Salt Lake County Jail commencing _____.
- ☒ Pay a fine in the amount of \$ 800 ☐ at a rate to be determined by the Department of Adult Probation and Parole; or ☐ at the rate of plus 25% Surcharge - may work off \$5 hour.
- ☒ Pay restitution in the amount of \$ 1000 or ☐ in an amount to be determined by the Department of Adult Probation and Parole; ☐ at a rate of _____; or ☐ at a rate to be determined by the Department of Adult Probation and Parole.
- ☒ Enter, participate in, and complete any High School Education program, counseling, or treatment as directed by the Department of Adult Probation and Parole. School time way to work off fine.
- ☒ Enter, participate in, and complete the Psychology program at SL Co Mental Health.
- ☐ Participate in and complete any ☐ educational; and/or ☐ vocational training ☐ as directed by the Department of Adult Probation and Parole; or ☐ with _____.
- ☐ Participate in and complete any _____ training ☐ as directed by the Department of Adult Probation and Parole; or ☐ with _____.
- ☐ Submit person, residence, and vehicle to search and seizure for the detection of drugs.
- ☐ Submit to drug testing.
- ☐ Not associate with anyone who illegally uses, sells, or otherwise distributes narcotics or drugs.
- ☐ Not frequent any place where drugs are used, sold, or otherwise distributed illegally.
- ☐ Not use or possess non-prescribed controlled substances.
- ☐ Refrain from the use of alcoholic beverages.
- ☐ Submit to testing for alcohol use.
- ☐ Take antabuse ☐ as directed by the Department of Adult Probation and Parole.
- ☐ Obtain and maintain full-time employment.
- ☐ Maintain full-time employment.
- ☐ Obtain and maintain full-time employment or full-time schooling.
- ☐ Maintain full-time employment or obtain and maintain full-time schooling.
- ☐ Defendant is to have no contact nor associate with _____.
- ☐ Defendant's probation may be transferred to _____ under the Interstate Compact as approved by the Department of Adult Probation and Parole.
- ☐ Complete _____ hours of community service restitution as directed by the Department of Adult Probation and Parole.
- ☐ Complete _____ hours of community service restitution in lieu of _____ days in jail.
- ☐ Defendant is to commit no crimes.
- ☐ Defendant is ordered to appear before this Court on _____ for a review of this sentence.
- ☒ Counts to run Concurrently with each other
- ☒ Probation Department assess by 6-11-91 for freedom
- ☐ or another program
- ☒ May bring motion to reduce after successful probation

DATED this 5th day of April 19 91

J. F. Frisch
DISTRICT COURT JUDGE

APPENDIX II

Hearings on Motion to Return Fines and Fees

State's Stipulation to Return of Fines

District Court Receipt for Refund of Fines

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	
	:	<u>REPORTER'S TRANSCRIPT OF</u>
PLAINTIFF,	:	<u>HEARING ON DEFENDANT'S</u>
	:	<u>MOTION TO RETURN FINES &</u>
VS.	:	<u>FEES</u>
	:	
TODD ALLEN PARKER,	:	
	:	CASE NO. 901901633 FS
DEFENDANT.	:	

BE IT REMEMBERED, THAT ON THE 28TH DAY OF AUGUST,
1992, COMMENCING IN THE A.M. CRIMINAL CALENDAR, THE ABOVE
-ENTITLED MATTER CAME ON FOR HEARING IN COURTROOM NO. 502 OF THE
COURTS BUILDING, METROPOLITAN HALL OF JUSTICE, 240 EAST 400
SOUTH, SALT LAKE CITY, UTAH BEFORE THE HONORABLE HOMER F.
WILKINSON, JUDGE IN THE THIRD JUDICIAL DISTRICT, STATE OF UTAH.

APPEARANCES

TOM VUYK, ESQUIRE, DEPUTY SALT LAKE COUNTY
ATTORNEY, 231 EAST 400 SOUTH, SALT LAKE CITY, UTAH 84111
TELEPHONE 531-4132 APPEARING ON BEHALF OF THE PLAINTIFF.

LISA J. REMAL, ESQUIRE, SALT LAKE LEGAL DEFENDER
ASSOCIATION, 424 EAST 500 SOUTH, SUITE 300, SALT LAKE CITY, UTAH
84111 TELEPHONE 532-5444 APPEARING WITH AND ON BEHALF OF THE
DEFENDANT.

ORIGINAL FILED DISTRICT COURT
Third Judicial District
NOV 30 1992

SALT LAKE COUNTY
FILED *[Signature]*
Deputy Clerk

DEC 2 1992

1 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD
2 IN THE PRESENCE AND HEARING OF THE DEFENDANT:)

3 THE COURT: STATE VERSUS TODD ALLEN PARKER.

4 MS. REMAL: LISA REMAL ON BEHALF OF MR. PARKER
5 WHO IS PRESENT.

6 THE COURT: THIS IS YOUR MOTION, COUNSEL?

7 MS. REMAL: IT IS, YOUR HONOR. IT'S OUR MOTION
8 FOR RETURN OF FINES, COSTS AND FEES TO MR. PARKER. YOUR
9 HONOR, THIS IS A MATTER IN WHICH TRIAL WAS HELD, APPEAL WAS
10 TAKEN TO THE UTAH COURT OF APPEALS. THE UTAH COURT OF APPEALS
11 REVERSED THE CONVICTION AND REMANDED THE CASE FOR FURTHER
12 PROCEEDINGS.

13 AND ON JULY 31, 1992, THE CASE WAS DISMISSED BY
14 YOUR HONOR IN VIEW OF THE FACT THAT THE UTAH COURT OF APPEALS'
15 DECISION HAD BASICALLY SUPPRESSED THE STATE'S EVIDENCE.

16 MR. PARKER, IN THE INTERIM, WHILE THE CASE WAS
17 PENDING ON APPEAL, HAS BEEN ON PROBATION PAYING FINES, COSTS
18 AND FEES, AND IN PARTICULAR HAS BEEN PAYING FEES TO THE
19 FREEMONT PROGRAM WHERE HE WAS PART OF THE ENVIRONMENTAL
20 STRUCTURE PROGRAM.

21 IT IS OUR MOTION THAT NOW THAT THERE IS NO
22 CONVICTION UPON WHICH TO BASE ANY IMPOSITION OF FINES AND FEES
23 AND COSTS, THAT ALL FINES, FEES AND COSTS PAID BY MR. PARKER
24 DURING THE PENDENCY OF THE APPEAL AND PRIOR TO DISMISSAL OF
25 THE CASE BE RETURNED TO HIM, AND I THINK WE'RE TALKING ABOUT A

1 FAIRLY SUBSTANTIAL AMOUNT OF MONEY.

2 MR. PARKER INDICATED TO ME HE PAID
3 APPROXIMATELY \$900 IN FINES, AND HE'S PAID \$180 PER MONTH TO
4 THE FREEMONT PROGRAM, AND HE WAS A RESIDENT THERE FOR NINE
5 MONTHS. SO WE'RE TALKING ABOUT THAT AMOUNT OF MONEY AS WELL,
6 YOUR HONOR.

7 MR. VUYK: YOUR HONOR, I WOULD THINK WHILE HE
8 WAS IN THE FREEMONT CENTER, THAT WENT TO PART OF HIS OWN
9 MAINTENANCE WITH REFERENCE TO WHAT'S THERE. I HAVE NO
10 KNOWLEDGE OF THE OTHER FINES OR FEES, AND AM SIMPLY GOING TO
11 SUBMIT IT ON THAT BASIS.

12 THE COURT: THE COURT WON'T ACCEPT THAT. THE
13 COURT WON'T ACT ON THIS UNTIL THE COUNTY ATTORNEY TAKES A
14 POSITION ON IT. IF IT HAS TO BE CONTINUED, IT WILL, BUT I'LL
15 EXPECT THE COUNTY ATTORNEY TO TAKE A POSITION AS FAR AS WHAT
16 THE FINES AND FEES SHOULD BE, AND WHETHER THEY SHOULD BE
17 RETURNED.

18 MR. VUYK: I HAVE ABSOLUTELY NO KNOWLEDGE AS TO
19 WHETHER THAT SHOULD BE DONE OR NOT. CAN IT BE CONTINUED ONE
20 WEEK?

21 THE COURT: THAT WILL BE THE ORDER.

22 (WHEREUPON, THE PROCEEDINGS CAME TO A CLOSE.)

23

24 (TRANSCRIBED BY NANCY BURR)

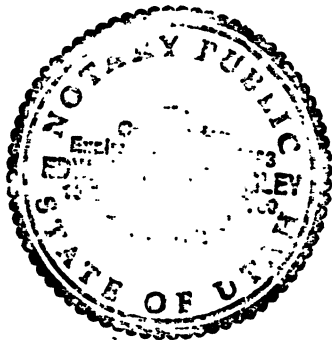
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REPORTER'S CERTIFICATE

STATE OF UTAH)
 SS.
COUNTY OF SALT LAKE)

I, EDWARD P. MIDGLEY, RPR, CM, OFFICIAL COURT REPORTER IN THE THIRD JUDICIAL DISTRICT, STATE OF UTAH, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING PROCEEDINGS WERE BY ME STENOGRAPHICALLY REPORTED AT THE TIMES AND PLACES HEREIN SET FORTH; THAT THE SAME WERE BY ME SUBSEQUENTLY CAUSED TO BE REDUCED TO TYPEWRITTEN FORM, CONSISTING OF PAGES 1 THROUGH 3, BOTH INCLUSIVE; AND THAT SAID TRANSCRIPTION SO PRODUCED CONSTITUTES A TRUE AND CORRECT TRANSCRIPTION OF TESTIMONY GIVEN, EVIDENCE ADDUCED AND PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

TO WHICH CERTIFICATION I HEREBY SET MY HAND AND NOTARIAL SEAL THIS 24TH DAY OF NOVEMBER, 1992, AT SALT LAKE CITY.





EDWARD P. MIDGLEY, RPR, -CM
OFFICIAL COURT REPORTER
(UTAH CSR NO. 133)

7940/11

FILED DISTRICT COURT
Third Judicial District

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH NOV 30 1992

STATE OF UTAH,

:

By

SALT LAKE COUNTY
Deputy Clerk

PLAINTIFF,

:

REPORTER'S TRANSCRIPT OF
HEARING ON DEFENDANT'S
MOTION TO RETURN FINES &
FEES

VS.

:

TODD ALLEN PARKER,

:

CASE NO. 901901633 FS

DEFENDANT.

:

BE IT REMEMBERED, THAT ON THE 15TH DAY OF
SEPTEMBER, 1992, COMMENCING IN THE A.M. CRIMINAL CALENDAR, THE
ABOVE-ENTITLED MATTER CAME ON FOR HEARING IN COURTROOM NO. 502 OF
THE COURTS BUILDING, METROPOLITAN HALL OF JUSTICE, 240 EAST 400
SOUTH, SALT LAKE CITY, UTAH BEFORE THE HONORABLE HOMER F.
WILKINSON, JUDGE IN THE THIRD JUDICIAL DISTRICT, STATE OF UTAH.

APPEARANCES

JOHN SPIKES, ESQUIRE, DEPUTY SALT LAKE COUNTY
ATTORNEY, 231 EAST 400 SOUTH, SALT LAKE CITY, UTAH 84111
TELEPHONE 531-4140 APPEARING ON BEHALF OF THE PLAINTIFF.

LISA J. REMAL, ESQUIRE, SALT LAKE LEGAL DEFENDER
ASSOCIATION, 424 EAST 500 SOUTH, SUITE 300, SALT LAKE CITY, UTAH
84111 TELEPHONE 532-5444 APPEARING WITH AND ON BEHALF OF THE
DEFENDANT.

ORIGINAL

FILED

92-0732-14 0075
DEC 2 1992

1 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD
2 IN THE PRESENCE AND HEARING OF THE DEFENDANT:)
3 THE COURT: STATE VERSUS TODD ALLEN PARKER.
4 MS. REMAL: LISA REMAL ON BEHALF OF MR. PARKER.
5 MR. SPIKES: JOHN SPIKES FOR THE STATE, YOUR
6 HONOR.
7 THE COURT: THE MATTER COMES BEFORE THE COURT
8 FOR WHAT, COUNSEL?
9 MS. REMAL: YOUR HONOR, THIS IS A MOTION FOR
10 RETURN OF FINES, COSTS AND FEES.
11 THE COURT: THIS WAS BEFORE THE COURT ON
12 ANOTHER OCCASION. THE STATE WAS GOING TO LOOK INTO THIS.
13 WHAT'S YOUR DECISION, MR. SPIKES?
14 MR. SPIKES: YOUR HONOR, I'M NOT FAMILIAR WITH
15 WHERE THINGS STAND IN THE CASE.
16 THE COURT: THE COURT IS GOING TO MAKE THIS
17 RULING: THE COURT IS GOING TO GIVE THE STATE UNTIL 2 O'CLOCK
18 THIS AFTERNOON TO MAKE SOME DECISION ON THIS AND GET BACK TO
19 THE COURT. IF THE STATE FAILS TO DO SO, THEN YOUR MOTION IS
20 GRANTED. IF THEY GET BACK WITH SOMETHING, THEN THE COURT WILL
21 CONSIDER IT.
22 MS. REMAL: FOR THE RECORD, LET ME INDICATE
23 THAT ALTHOUGH MY MOTION STATES GROUNDS THAT ARE IN THE
24 INTEREST OF JUSTICE, I WOULD INDICATE TO THE COURT ORALLY THAT
25 IN ADDITION TO THE INTEREST OF JUSTICE I BELIEVE THAT BOTH

1 FEDERAL AND STATE DUE PROCESS RIGHTS ARE INVOLVED IN THE RIGHT
2 TO NOT HAVE YOUR PROPERTY DEPRIVED WITHOUT DUE PROCESS OF LAW.
3 MR. PARKER'S CONVICTION WAS REVERSED BY THE COURT OF APPEALS
4 AND THE CASE IS NOW DISMISSED, AND I BELIEVE HE'S ENTITLED TO
5 THE RETURN OF ALL FINES HE'S PAID PLUS ALL COSTS AND FEES,
6 INCLUDING COSTS OF HIS STAY AT THE HALFWAY HOUSE BECAUSE THERE
7 IS NO LONGER ANY BASIS FOR THAT DEPRIVATION.

8 THE COURT: THANK YOU, COUNSEL.

9 (WHEREUPON, THE PROCEEDINGS CAME TO A CLOSE.)

10

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14 (TRANSCRIBED BY NANCY BURR)

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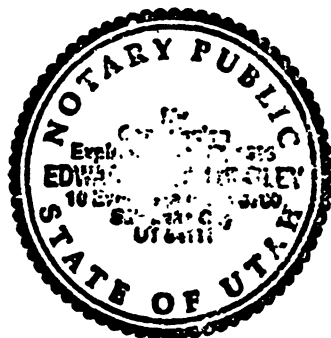
25

REPORTER'S CERTIFICATE

STATE OF UTAH)
 SS.
COUNTY OF SALT LAKE)

I, EDWARD P. MIDGLEY, RPR, CM, OFFICIAL COURT REPORTER IN THE THIRD JUDICIAL DISTRICT, STATE OF UTAH, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING PROCEEDINGS WERE BY ME STENOGRAPHICALLY REPORTED AT THE TIMES AND PLACES HEREIN SET FORTH; THAT THE SAME WERE BY ME SUBSEQUENTLY CAUSED TO BE REDUCED TO TYPEWRITTEN FORM, CONSISTING OF PAGES 1 THROUGH 3, BOTH INCLUSIVE; AND THAT SAID TRANSCRIPTION SO PRODUCED CONSTITUTES A TRUE AND CORRECT TRANSCRIPTION OF TESTIMONY GIVEN, EVIDENCE ADDUCED AND PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

TO WHICH CERTIFICATION I HEREBY SET MY HAND AND NOTARIAL SEAL THIS 24TH DAY OF NOVEMBER, 1992, AT SALT LAKE CITY.



A handwritten signature of Edward P. Midgley in black ink, written over a horizontal line.

EDWARD P. MIDGLEY, RPR, CM
OFFICIAL COURT REPORTER
(UTAH CSR NO. 133)

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 901901633 FS
	:	DATE 09/15/92
VS	:	HONORABLE HOMER F WILKINSON
	:	COURT REPORTER ED MIDGLEY
PARKER, TODD ALLEN	:	COURT CLERK DAG
DEFENDANT	:	

TYPE OF HEARING: ORDER TO SHOW CAUSE
PRESENT: PLAINTIFF DEFENDANT

P. ATTY. SPIKES, JOHN
D. ATTY. REMAL, LISA J

DEFENDANT'S MOTION TO RETURN FINES AND FEES COMES NOW ON
REGULARLY BEFORE THE COURT FOR HEARING, APPEARANCES AS SHOWN
ABOVE. WHEREUPON, AFTER CONSIDERATION FROM THE STATE, THEY
WILL STIPULATE TO RETURN THE FINES, BUT OBJECT TO ANY MONIES
RETURNED FOR REHABILITATION. THE COURT SO ORDERS.

CC: LDA LISA REMAL

SEP 25 1992

Third District Court

3y Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

State of Utah

Plaintiff,

vs.

Todd A. Parker

Defendant.

: RECEIPT

:

:

: CASE NO. 901901633

:

Wilkins

I HEREBY ACKNOWLEDGE RECEIPT FROM THE THIRD DISTRICT COURT
OF CHECK NO. 1808 IN THE SUM OF \$ 750.00.

Sept 24, 1992
Date

Todd Parker
By

APPENDIX III

Original Sentencing Hearing

Affidavits of Vicki Harker and Judy Sahm (Fremont Center)

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

* * *

THE STATE OF UTAH, :
 :
 Plaintiff, : Case No. 901901633 FS
 :
 v. : Transcript of:
 :
 TODD ALLEN PARKER, : SENTENCING PROCEEDINGS
 :
 Defendant. :

* * *

BEFORE THE HONORABLE JUDGE HOMER F. WILKINSON

Salt Lake City, Utah

Friday, April 5, 1991

APPEARANCES

For the Plaintiff: JOHN N. SPIKES
Deputy Salt Lake County Attorney
Salt Lake County Attorney's Ofc.
231 East 400 South, #300
Salt Lake City, Utah 84111

For the Defendant: JAMES BRADSHAW
Attorney at Law
Salt Lake Legal Defender Assn.
424 East 500 South, #300
Salt Lake City, Utah 84111

REPORTER: SUZANNE WARNICK, CSR, RPR-CM
Official Court Reporter
240 East 400 South, #304
Salt Lake City, Utah 84111
Phone: 801-535-5470

THIRD JUDICIAL DISTRICT COURT
Third Judicial District

MAR 17 1993

SALT LAKE COUNTY

By  Deputy Clerk

1 FRIDAY, APRIL 5, 1991; A.M. SESSION

2 S E N T E N C I N G P R O C E E D I N G S

3
4 THE COURT: State of Utah versus Todd Allen Parker.

5 This is the time set for sentencing, counsel. Any
6 legal reason why sentence should not be imposed?

7 MR. BRADSHAW: There is none, your Honor.

8 THE COURT: You may proceed.

9 MR. BRADSHAW: Your Honor, I hope the Court recalls
10 this case. Just by way of refreshing your recollection, it
11 was a case that Mr. Blaylock and I tried before your Honor, a
12 bench trial, where Mr. Parker was accused of breaking into
13 three garages and stealing a flashlight.

14 THE COURT: I do recall.

15 MR. BRADSHAW: We went through the trial. And the
16 only reason we went through the trial, as the Court was
17 aware, was to preserve the Motion to Suppress. The State had
18 offered to allow the defendant to plead guilty to a Third
19 Degree Felony but would not allow him to do that if he wanted
20 to preserve his right to appeal. In other words, if he
21 wanted to do a conditional plea and preserve his right to
22 appeal the Motion to Suppress, they were not willing to give
23 a Third Degree Felony.

24 But I offer that by way of background because I am
25 going to ask the Court to do what the State refused to do,

1 and that is to reduce these convictions one degree to a Third
2 Degree Felony pursuant to 76-3-402. And I submit to the
3 Court that a defendant's conviction, whether it be a Second
4 or Third, should not be based upon the fact that they attempt
5 to preserve their constitutionally guaranteed rights. That
6 is simply not a basis to deny someone the benefit of good
7 faith negotiation. And the State was clearly willing to give
8 this defendant a Third Degree Felony if he gave up his right
9 to contest his search and seizure. And if he contested that,
10 then somehow he waived that.

11 I think that's inappropriate. And I think it is
12 in the interest of justice, which is the language of
13 76-3-402, to reduce this one degree to a Third Degree Felony
14 and sentence the defendant accordingly on a Third Degree
15 Felony.

16 He is still not getting the benefit as he would
17 before because he is sentenced on Third Degree Felonies
18 rather than one Third Degree Felony which was an offer if he
19 was willing to give up his constitutional right. And I would
20 ask the Court to reduce it one degree.

21 In regards to the sentence, the recommendation in
22 the Report is that the defendant go to Fremont. And I really
23 don't have a strong objection to the recommendations, and I
24 think they reflect that Mr. Parker is excellent on the
25 Criminal History Assessment, that he didn't have an extensive

1 prior record.

2 Mr. Parker and I talked about Fremont. That's a
3 long program and it may be a little severe for someone with
4 his prior history, for someone who is excellent. That's a
5 year long -- it's a residential year long. He has to live
6 there for at least a year. That is a bit excessive.

7 I think he needs probation and vocational rehab,
8 which is one of the things that Fremont is going to give him.
9 He needs to be on formal probation, and the Probation
10 Department reflects that. But I think that this one year
11 program is a bit excessive given the nature of this offense
12 and the nature of his prior record. So I would ask the Court
13 to impose all the conditions of probation save that first one
14 to the Community Correction Center.

15 THE COURT: What are you proposing in place of
16 that?

17 MR. BRADSHAW: That he be placed on probation to
18 Adult Probation & Parole. As a condition of his probation he
19 receive vocational rehabilitation, that he undergo any and
20 all mental health counseling that's ordered by Adult
21 Probation & Parole, basically any counseling that they deem
22 appropriate -- out-patient, anything of that nature -- and
23 the other conditions that are listed as terms and conditions
24 of his probation.

25 MR. SPIKES: Your Honor, as Mr. Bradshaw has

1 indicated, this is Mr. Blaylock's case. The information I
2 have would indicate to me that it would be inappropriate for
3 the State to go along with any sort of motion to reduce. The
4 matter came for trial before the Court. And the Court
5 convicted Mr. Parker of the Second Degree Felonies, and we
6 would ask that the Court sentence him appropriately.

7 Apparently there was some discussions concerning a
8 plea bargain. Whatever took place broke down and the matter
9 went to trial. That's what's in front of the Court.

10 Mr. Blaylock's notes do indicate that it would be
11 appropriate to submit it on the information contained in the
12 Presentence Report. I think Fremont is a good program. It's
13 got some structure and it would be good for Mr. Parker to go
14 into the Fremont program and let him do that, and I ask the
15 Court to direct him to complete the program.

16 THE COURT: What is your opinion as far as the
17 Fremont program being an overkill, as he indicated?

18 MR. SPIKES: I don't believe that's the case. I
19 think the Fremont program has a lot of flexibility. They
20 release people to pursue employment. If that's appropriate
21 for Mr. Parker, I'm sure they would make those
22 determinations.

23 MR. BRADSHAW: I called today because I had some
24 concerns and they indicated that it would probably be at
25 least a year and perhaps longer. Some people are in Fremont

1 as long as two years. It's an in-depth program. There is no
2 question about that.

3 THE COURT: Anything you wish to state, sir?

4 THE DEFENDANT: No, sir.

5 THE COURT: Well, the Court does sentence the
6 defendant, Todd Allen Parker, for the crime of Burglary of a
7 Dwelling, being a Second Degree Felony, to incarceration at
8 the Utah State Prison for an indeterminate term of 1 to 15
9 years and a fine of \$10,000. The Court does stay the
10 execution of the prison sentence and the fine and places the
11 defendant on probation to the Adult Parole and Probation
12 Department for a period of 18 months, or such shorter or
13 longer time as they may recommend to this Court. He is to
14 comply with all rules, conditions and regulations which they
15 may impose upon him.

16 As further condition of the probation the Court
17 does order that the defendant be responsible for -- jointly
18 and severally responsible for full restitution in this
19 matter.

20 That the Court would further order that the
21 defendant -- I am further ordering that the Probation
22 Department during the period of probation between now and
23 June 11th assess this individual and make a determination as
24 to whether they recommend the Fremont Center for him or
25 another program which they feel would be as good or better

1 for him. That if the Probation Department is of the opinion
2 that other programs are as good or better, then he may be
3 placed in that particular program. If the matter needs to be
4 brought back before the Court, it can. That the Court will
5 give discretion to the Probation Department to make that
6 decision if they see fit.

7 If counsel for the defendant wishes to bring it
8 back before the Court prior to the June 11th date that he can
9 go into the Fremont Center, then of course he may do so. But
10 I would ask that to be brought back before the Court at least
11 two weeks prior to that date so that the Fremont Center does
12 know where they are going on it. So what I am saying at this
13 time is that he is to be placed in Fremont, but the
14 discretion is with the Probation Department to look at that
15 and make further recommendation to the Court as they see fit,
16 and counsel has the right to participate in that.

17 The Court would further order that the defendant
18 pay a fine of \$800 plus a 25 percent surcharge. However, the
19 Court will allow him to work this off as the Probation
20 Department has recommended, and they recommended at this
21 point at \$5 per hour. The Court would allow that and any
22 other further recommendations that the Probation Department
23 may recommend as far as working that off.

24 The Court would further order that during the
25 course of the probation that the defendant enter into and

1 complete his high school education, obtain his GED education.
2 That the Court would allow the Probation Department to work
3 this in with that fine and allow school time to be placed as
4 a way to work off the fine and alot to that a certain amount
5 of hours as far as the school is concerned.

6 The Court would further order that the defendant
7 enter into and participate and complete any type of
8 psychological evaluation through the forensic unit of the
9 Salt Lake County Mental Health or participate in any other
10 type of rehabilitation counseling, mental health program the
11 Probation Department may recommend for him.

12 The Court would further order that -- the Court
13 would deny the defendant's request at this time to reduce
14 this matter pursuant to Section 76-3-402. However, I would
15 grant to the defendant the right pursuant to that section to
16 bring this matter back up at the end of the probation. And
17 if the probation has been successfully completed, and that
18 would include the obtaining of a GED education, that the
19 Court would then consider that motion and would be looking
20 favorably upon it. However, I would not make a decision at
21 this time.

22 MR. BRADSHAW: We would ask that there be a
23 notation in the file that the Court would consider it at the
24 end of probation.

25 THE COURT: It's in the record. And you may place

1 it in any motion you want to.

2 I am informed by the clerk that we have three
3 counts on this gentleman.

4 MR. BRADSHAW: There are three counts, your Honor.
5 And I would specifically request in regards to the finding,
6 that if he is going to be at Fremont and there for a year,
7 which I think is a distinct possibility at this point, \$800
8 is excessive, and triple that would be most excessive.

9 THE COURT: I didn't say triple it.

10 MR. BRADSHAW: I don't want to put words in your
11 mouth.

12 THE COURT: He does have two other Counts of Second
13 Degrees?

14 MR. BRADSHAW: Right.

15 THE COURT: The Court also sentences the defendant,
16 Todd Allen Parker, for the crime of Burglary of a Dwelling,
17 being a Second Degree Felony, to incarceration at the Utah
18 State Prison for an indeterminate term of 1 to 15 years and
19 fine of \$10,000. The Court also sentences the defendant,
20 Todd Allen Parker, for the crime of Burglary of a Dwelling,
21 being a Second Degree Felony, to incarceration at the Utah
22 State Prison for an indeterminate term of 1 to 15 years and a
23 fine of \$10,000.

24 And the Court does stay the execution of all
25 prison sentences and fines and orders that they run

1 concurrent, and orders that he be on probation under the same
2 terms and conditions as stated previously by the Court.

3 Now, I'm not sure what Section 76 says
4 concerning -- and maybe you are not pursuing anything on that
5 as far as -- or are you asking for anything concerning
6 dismissal of any other Counts? Maybe that's not an option
7 you have.

8 MR. BRADSHAW: I don't believe that is an option at
9 the present time. But we are going to ask the Court at the
10 end of probation to reduce them, and we'll be approaching the
11 Court in that regard.

12 THE COURT: That will be the order of the Court
13 then.

14 MR. BRADSHAW: Thank you, your Honor.

15 THE COURT: Good luck to you, sir.

16 (This concludes these Sentencing Proceedings.)

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C E R T I F I C A T E

STATE OF UTAH)
 :
COUNTY OF SALT LAKE)

I, SUZANNE WARNICK, CSR, RPR-CM, do certify that I
am a Certified Shorthand Reporter, Registered Professional
Reporter with the Certificate of Merit, and a Notary Public
in and for the State of Utah.

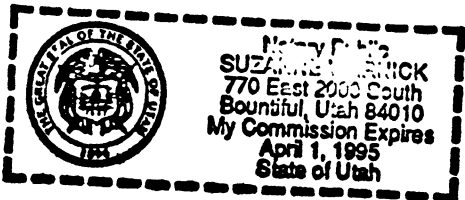
That at the time and place of the proceedings in
the foregoing matter, I appeared as the court reporter in the
Third Judicial District Court for the Honorable Judge Homer
F. Wilkinson, and thereat reported in stenotype all of the
proceedings had therein.

That thereafter, my said shorthand notes of the
Sentencing Proceedings were transcribed by computer into the
foregoing pages; and that this constitutes a full, true and
correct transcript of the same.

WITNESS MY HAND AND SEAL in Salt Lake City, Utah on
this, the 13th day of March 1993.

Suzanne Warnick
Suzanne Warnick, CSR, RPR-CM

My commission expires:
1 April 1995



JAN GRAHAM (1231)
Attorney General
J. KEVIN MURPHY (5768)
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Telephone: (801) 538-1022

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
Plaintiff/Appellee,)	AFFIDAVIT OF VICKI
v.)	HARKER
)	
TODD ALLEN PARKER,)	
Defendant/Appellant.)	Case No. 920732-CA

STATE OF UTAH)
 :ss
County of Salt Lake)

Vicki Harker, being duly sworn, deposes and says:

1. That I am the staff supervisor at the Fremont Community Correctional Center. I can be reached at 2588 West 2365 South, West Valley City, Utah 84119 or by phone at (801) 972-8651 during business hours.

2. That Todd Allen Parker was enrolled at the Fremont Center and classified as a Probation Environmental Structure offender from November 12, 1991 to July 31, 1992.

3. That while Parker was at the center he was required to pay a service fee of \$180 per month for his room, linen, and meals. This is the standard fee required (absent medical exemption) of all Environmental Structure offenders.

4. That Parker was assessed service fees in the amount of \$1548.00 for the time he spent at the Fremont center.

5. That I am informed by Judy Sahm, office technician, who is also filing an affidavit in this case, that Parker has only paid \$1146.29 leaving a balance of \$401.71 owing to Fremont.

6. That Parker received three meals a day on weekdays and two meals a day on weekends (brunch and dinner) while living at the center.

7. That Parker received treatment while he was participating in the program that included group therapy sessions twice a week, and an individual counselor who worked closely with him to assist in fulfilling the program requirements.

8. That Parker was also involved in the Granite School District GED program which was provided to him at the Fremont Center.

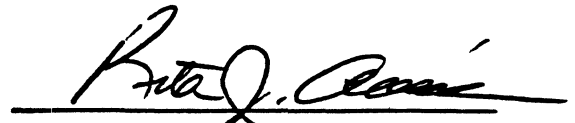
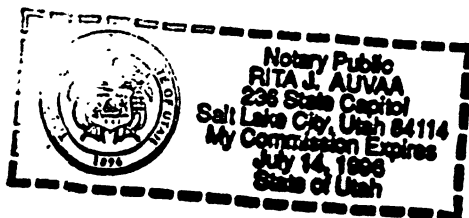
9. Parker was employed, as is required of all offenders, at Chuck A Rama for a short period and later at Deseret Industries for the remainder of his residency.

DATED this 29th day of July, 1993.



Vicki Harker

Subscribed and sworn to before me this 29th day of July, 1993.



NOTARY PUBLIC

My Commission expires July 14, 1996

JAN GRAHAM (1231)
Attorney General
KEVIN MURPHY (5768)
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Telephone: (801) 538-1022

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
Plaintiff/Appellee,)	AFFIDAVIT OF JUDY SAHM
v.)	
)	
TODD ALLEN PARKER,)	
Defendant/Appellant.)	Case No. 920732-CA

STATE OF UTAH)
 :SS
County of Salt Lake)

Judy Sahm, being duly sworn, deposes and says:

1. That I am an Office Technician at the Fremont Center located at 2588 West 2365 South in West Valley City, Utah. In July of 1992, when Todd Allen Parker was released from the center, I was in charge of billing statements and financial records.

2. That according to our records Todd Allen Parker was assessed service fees in the amount of \$1548.00 and he has only paid \$1146.29 to the Fremont Center.

3. That Parker has a balance of \$401.71 still owing to the Fremont Center and has not made any payments since he was released on July 31, 1992.

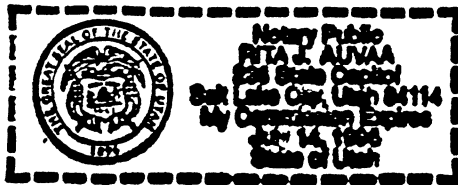
4. That the documents attached are copies of the true and correct records I have in my custody regarding the current status of Parker's account.

DATED this 29th day of July, 1993.

Judy Sahn

Judy Sahn

Subscribed and sworn to before me this 29th day of July, 1993.



Rita J. Alvaa

NOTARY PUBLIC

My commission expires July 14, 1995



Michael O. Leavitt
Governor
O. Lane McCotter
Executive Director
Raymond H. Wahl
Director, Field Operations

State of Utah

DEPARTMENT OF CORRECTIONS
FIELD OPERATIONS

FREMONT COMMUNITY CORRECTIONAL CENTER
2588 West 2365 South
West Valley City, Utah 84119
(801) 972-8651

PRIVATE

MEMORANDUM

TO: Trina Mann
Attorney General's Office
State of Utah

FROM: Vicki Harker, Supervisor *VH*
Fremont Community Correctional Center

DATE: July 22, 1993

RE: Todd Allen Parker

Todd Allen Parker entered Fremont Community Correctional Center on November 12, 1991. He was released from this program on July 31, 1992. During this period of time he was assessed service fees in the amount of \$1548.00. He paid a total of \$1146.29, leaving a balance of \$401.71 owing to Fremont. Please refer to attached financial agreement.

Mr. Parker was classified as a Probation Environmental Structure offender. He participated in group therapy two times per week and was involved in the Granite School District GED program which was provided to him here on center. He was provided with an individual counselor who worked closely with him to assist him in program requirements. Mr. Parker was employed, as is required of all offenders, at Chuck A Rama for a short period and later at Deseret Industries for the remainder of his residency.

If there is any further information that would be helpful in this matter please feel free to contact me at any time.

1 enclosure

PRIVATE



Norman H. Bangerter
Governor
Gary W. DeLand
Executive Director
James H. Gillespie Jr.
Director, Field Operations


State of Utah
DEPARTMENT OF CORRECTIONS
FIELD OPERATIONS

FREMONT COMMUNITY CORRECTIONAL CENTER
2588 West 2365 South
West Valley City, Utah 84119
(801) 972-8651

PRIVATE

July 31, 1992

I, Todd Allen Parker, agree to pay Fremont Community Correctional Center for Service Fees accrued while a resident from November 1991 to July 1992 in the amount of \$407.71 at the rate of \$100 per month beginning August 1992.



Resident Signature

WITNESS:

PRIVATE

